

MICHAEL J. S. MORIYAMA #7003
Office of Consumer Protection
State of Hawaii
235 South Beretania Street, Suite 801
Honolulu, Hawaii 96813-2419
Telephone: (808) 586-2636

Attorney for Plaintiff

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2005 MAR 28 AM 10:07

H. CHING
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by its Office of)	Civil No. <u>05 - 1 - 0516 - 03</u>	E E H
Consumer Protection,)	(Other Civil Action)	
)		
Plaintiff,)	COMPLAINT AND SUMMONS	
)		
vs.)		
)		
PACIFIC WESTERN UNIVERSITY)		
(HAWAII), INC. (aka AMERICAN)		
PACWEST INTERNATIONAL)		
UNIVERSITY), a Hawaii corporation,)		
)		
Defendant.)		
)		
)		

COMPLAINT

Plaintiff, for a cause of action against the above-named Defendants,
alleges and avers that:

1. This action is brought by the Office of Consumer Protection,
pursuant to Haw. Rev. Stat. Chapters 446E, 480, 481A, and 487, seeking to

I do hereby certify that this is a full, true and
correct copy of the original on file in this office.


Clerk, Circuit Court, First Circuit

enjoin Defendants from engaging in certain acts or practices in violation of Hawaii's consumer protection laws and to obtain other and further relief.

2. This Court has jurisdiction and venue in this action pursuant to Haw. Rev. Stat. §§ 446E-3, 480-21, 603-21.5(3), 603-23 and 603-36(5).

3. Defendant Pacific Western University (Hawaii), Inc. ("Defendant PWU(HI)") was incorporated in Hawaii on June 14, 1988.

4. Defendant PWU(HI) was organized to transact business as a degree-granting correspondence university.

5. Defendant PWU(HI) is not now nor ever has been accredited by a recognized accrediting agency or association recognized by the United States Secretary of Education.

6. From inception, Defendant PWU(HI) was and is subject to the provisions of Haw. Rev. Stat. Chapter 446E.

7. Defendant PWU(HI) is now known as "American Pacwest International University", "American Pacwest" and "APIU".

8. Pacific Western University was incorporated in California on November 23, 1976.

COUNT I
FAILURE TO INCLUDE STATUTORY
DISCLOSURES IN PROMOTIONAL MATERIALS

9. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 8 above as if fully set forth herein.

10. Defendant PWU(HI) produced or caused to be produced catalogs, promotional materials and/or contracts in different media, including but not limited to magazines and the internet.

11. Defendant PWU(HI) was required by Haw. Rev. Stat. § 446E-2 to include certain disclosures in its catalogs, promotional materials and/or contracts in a specified manner.

12. Defendant PWU(HI) failed to include the required disclosures in its catalogs, promotional materials and/or contracts.

13. Defendant PWU(HI) failed to include the required disclosures in its catalogs, promotional materials and/or contracts in the specified manner.

14. In failing to include the required disclosures and/or include the required disclosures in the specified manner in its catalogs, promotional materials and/or contracts, Defendant PWU(HI) engaged in unfair or deceptive acts or practices.

15. In failing to include the required disclosures and/or include the required disclosures in the specified manner in its catalogs, promotional materials and/or contracts, Defendant PWU(HI) caused the likelihood of confusion or of misunderstanding as to the sponsorship, approval or certification of goods or services.

16. In failing to include the required disclosures and/or include the required disclosures in the specified manner in its catalogs, promotional materials and/or contracts, Defendant PWU(HI) caused the likelihood of confusion or of

misunderstanding as to affiliation, connection, association with or certification by another.

17. In failing to include the required disclosures and/or include the required disclosures in the specified manner in its catalogs, promotional materials and/or contracts, Defendant PWU(HI) represented that goods or services had sponsorship, approval, characteristics, uses or benefits that they did not have or that a person had a sponsorship, approval, status, affiliation or connection that the person did not have.

18. In failing to include the required disclosures and/or include the required disclosures in the specified manner in its catalogs, promotional materials and/or contracts, Defendant PWU(HI) represented that goods or services were of a particular standard, quality or grade when they were of another.

19. In failing to include the required disclosures and/or include the required disclosures in the specified manner in its catalogs, promotional materials and/or contracts, Defendant PWU(HI) advertised goods or services with intent not to sell them as advertised.

20. In failing to include the required disclosures and/or include the required disclosures in the specified manner in its catalogs, promotional materials and/or contracts, Defendant PWU(HI) engaged in conduct which created a likelihood of confusion or of misunderstanding.

21. In failing to include the required disclosures and/or include the required disclosures in the specified manner in its catalogs, promotional materials

and/or contracts, Defendant PWU(HI) violated Haw. Rev. Stat. §§ 446E-2, 446E-3, 480-2 and/or 481A-3(a)(2), (3), (5), (7), (9) and (12).

22. Each unfair or deceptive act or practice constitutes a separate and distinct violation of Haw. Rev. Stat. §§ 446E-2, 446E-3, 480-2 and/or 481A-3.

COUNT II
UNLAWFUL INDICATION OR SUGGESTION
THAT HAWAII APPROVED OR REGULATED OPERATIONS

23. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 22 above as if fully set forth herein.

24. Pacific Western University and Defendant PWU(HI) are separate and distinct legal entities.

25. Defendant PWU(HI) maintains a website accessed through www.pwu.com.

26. In its website, Defendant PWU(HI) indicates or suggests that the State of Hawaii licenses, approves or regulates its operations by posting statements and information including but not limited to stating that the Hawaii legislature recognized and commended Defendant PWU(HI), posting images of commendations issued to "Pacific Western University" by the Hawaii State legislature and stating that the State of Hawaii Department of Commerce and Consumer Affairs issued a "CERTIFICATE OF GOOD STANDING Authorization No. 71582-D1-2004042617431208".

27. Indicating or suggesting that the State of Hawaii licensed, approved or regulated the operations of Defendant PWU(HI) is prohibited by Haw. Rev. Stat. § 446E-5(a).

28. In indicating or suggesting the State of Hawaii licensed, approved or regulated its operations, Defendant PWU(HI) engaged in unfair or deceptive acts or practices.

29. In indicating or suggesting the State of Hawaii licensed, approved or regulated its operations, Defendant PWU(HI) caused the likelihood of confusion or of misunderstanding as to the sponsorship, approval or certification of goods or services.

30. In indicating or suggesting the State of Hawaii licensed, approved or regulated its operations, Defendant PWU(HI) caused the likelihood of confusion or of misunderstanding as to affiliation, connection, association with or certification by another.

31. In indicating or suggesting the State of Hawaii licensed, approved or regulated its operations, Defendant PWU(HI) represented that goods or services had sponsorship, approval, characteristics, uses or benefits that they did not have or that a person had a sponsorship, approval, status, affiliation or connection that the person did not have.

32. In indicating or suggesting the State of Hawaii licensed, approved or regulated its operations, Defendant PWU(HI) represented that goods or services were of a particular standard, quality or grade when they were of another.

33. In indicating or suggesting the State of Hawaii licensed, approved or regulated its operations, Defendant PWU(HI) advertised goods or services with intent not to sell them as advertised.

34. In indicating or suggesting the State of Hawaii licensed, approved or regulated its operations, Defendant PWU(HI) engaged in conduct which created a likelihood of confusion or of misunderstanding.

35. In indicating or suggesting the State of Hawaii licensed, approved or regulated its operations, Defendant PWU(HI) violated Haw. Rev. Stat. §§ 446E-3, 446E-5, 480-2 and/or 481A-3(a)(2), (3), (5), (7), (9) and (12).

36. Each unfair or deceptive act or practice constitutes a separate and distinct violation of Haw. Rev. Stat. §§ 446E-3, 446E-5, 480-2 and/or 481A-3.

COUNT III
UNLAWFUL ISSUANCE OF DEGREES
WITHOUT EXCLUSIVE OFFICE IN HAWAII

37. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 36 above as if fully set forth herein.

38. Defendant PWU(HI) issued degrees without having an office in Hawaii for its exclusive use.

39. Issuing degrees without having an office in Hawaii for its exclusive use is prohibited by Haw. Rev. Stat. § 446E-5(d).

40. In issuing degrees without having an office in Hawaii for its exclusive use, Defendant PWU(HI) engaged in unfair or deceptive acts or practices.

41. In issuing degrees without having an office in Hawaii for its exclusive use, Defendant PWU(HI) represented that goods or services had characteristics, uses or benefits that they did not have.

42. In issuing degrees without having an office in Hawaii for its exclusive use, Defendant PWU(HI) represented that goods or services were of a particular standard, quality or grade when they were of another.

43. In issuing degrees without having an office in Hawaii for its exclusive use, Defendant PWU(HI) engaged in conduct which created a likelihood of confusion or of misunderstanding.

44. In issuing degrees without having an office in Hawaii for its exclusive use, Defendant PWU(HI) violated Haw. Rev. Stat. §§ 446E-3, 446E-5, 480-2 and/or 481A-3(a)(5), (7) and (12).

45. Each unfair or deceptive act or practice constitutes a separate and distinct violation of Haw. Rev. Stat. §§ 446E-3, 446E-5, 480-2 and/or 481A-3.

COUNT IV
UNLAWFUL ISSUANCE OF DEGREES
WITHOUT 25 ENROLLED STUDENTS IN HAWAII

46. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 45 above as if fully set forth herein.

47. Defendant PWU(HI) issued degrees without having 25 enrolled students in Hawaii in each academic year of its operation for the purpose of performing course requirements that were part of the students' educational curriculum.

48. Issuing degrees without having 25 enrolled students in Hawaii in each academic year of its operation for the purpose of performing course requirements that were part of the students' educational curriculum is prohibited by Haw. Rev. Stat. § 446E-5(d).

49. In issuing degrees without having 25 enrolled students in Hawaii in each academic year of its operation for the purpose of performing course requirements that were part of the students' educational curriculum, Defendant PWU(HI) engaged in unfair or deceptive acts or practices.

50. In issuing degrees without having 25 enrolled students in Hawaii in each academic year of its operation for the purpose of performing course requirements that were part of the students' educational curriculum, Defendant PWU(HI) represented that goods or services had characteristics, uses or benefits that they did not have.

51. In issuing degrees without having 25 enrolled students in Hawaii in each academic year of its operation for the purpose of performing course requirements that were part of the students' educational curriculum, Defendant PWU(HI) represented that goods or services were of a particular standard, quality or grade when they were of another.

52. In issuing degrees without having 25 enrolled students in Hawaii in each academic year of its operation for the purpose of performing course requirements that were part of the students' educational curriculum, Defendant

PWU(HI) engaged in conduct which created a likelihood of confusion or of misunderstanding.

53. In issuing degrees without having 25 enrolled students in Hawaii in each academic year of its operation for the purpose of performing course requirements that were part of the students' educational curriculum, Defendant PWU(HI) violated Haw. Rev. Stat. §§ 446E-3, 446E-5, 480-2 and/or 481A-3(a)(5), (7) and (12).

54. Each unfair or deceptive act or practice constitutes a separate and distinct violation of Haw. Rev. Stat. §§ 446E-3, 446E-5, 480-2 and/or 481A-3.

COUNT V
UNLAWFUL COLLECTION OF
TUITION PAYMENTS OR OTHER FEES

55. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 54 above as if fully set forth herein.

56. Defendant PWU(HI) collected tuition payments or other fees from or on behalf of students without complying with all the requirements of Haw. Rev. Stat. Chapter 446E.

57. Collecting tuition payments or other fees from or on behalf of students without complying with all the requirements of Haw. Rev. Stat. Chapter 446E is prohibited by Haw. Rev. Stat. § 446E-5(e).

58. In collecting tuition payments or other fees from or on behalf of students without complying with all the requirements of Haw. Rev. Stat. Chapter 446E, Defendant PWU(HI) engaged in unfair or deceptive acts or practices.

59. In collecting tuition payments or other fees from or on behalf of students without complying with all the requirements of Haw. Rev. Stat. Chapter 446E, Defendant PWU(HI) represented that goods or services had characteristics that they did not have.

60. In collecting tuition payments or other fees from or on behalf of students without complying with all the requirements of Haw. Rev. Stat. Chapter 446E, Defendant PWU(HI) represented that goods or services were of a particular standard, quality or grade when they were of another.

61. In collecting tuition payments or other fees from or on behalf of students without complying with all the requirements of Haw. Rev. Stat. Chapter 446E, Defendant PWU(HI) engaged in conduct which created a likelihood of confusion or of misunderstanding.

62. In collecting tuition payments or other fees from or on behalf of students without complying with all the requirements of Haw. Rev. Stat. Chapter 446E, Defendant PWU(HI) violated Haw. Rev. Stat. §§ 446E-3, 446E-5, 480-2 and/or 481A-3(a)(5), (7) and (12).

63. Each unfair or deceptive act or practice constitutes a separate and distinct violation of Haw. Rev. Stat. §§ 446E-3, 446E-5, 480-2 and/or 481A-3.

COUNT VI
DECEPTIVE USE OF IDENTICAL INFORMATION IN
WEBSITES OF DEFENDANT PWU(HI)
AND PACIFIC WESTERN UNIVERSITY

64. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 63 above as if fully set forth herein.

65. Defendant PWU(HI) is a Hawaii corporation operating as an unaccredited degree granting institution.

66. Pacific Western University is a California corporation.

67. Pacific Western University was granted approval by the State of California to provide degree programs, certificates and diplomas only for (1) Bachelor of Science in Business Administration, (2) Bachelor of Science in Public Administration, (3) Master of Business Administration, (4) Master of Science in Management and (5) Doctor of Philosophy in Business Administration for the period from June 15, 2002 to June 14, 2006.

68. Defendant PWU(HI) has not been granted any approval by the State of California to issue degree programs, certificates or diplomas.

69. Defendant PWU(HI) and Pacific Western University both maintained and continue to maintain websites accessed through a common address at www.pwu.com.

70. The websites maintained by Defendant PWU(HI) and Pacific Western University present identical information to consumers who visit their websites and read said information.

71. In presenting identical information to consumers who visit their websites and read said information, Defendant PWU(HI) engaged in unfair or deceptive acts or practices.

72. In presenting identical information to consumers who visit their websites and read said information, Defendant PWU(HI) passed off goods or services as those of another.

73. In presenting identical information to consumers who visit their websites and read said information, Defendant PWU(HI) caused the likelihood of confusion or of misunderstanding as to affiliation, connection, association with or certification by another.

74. In presenting identical information to consumers who visit their websites and read said information, Defendant PWU(HI) represented that goods or services had sponsorship, approval, characteristics, uses or benefits that they did not have or that a person had a sponsorship, approval, status, affiliation or connection that the person did not have.

75. In presenting identical information to consumers who visit their websites and read said information, Defendant PWU(HI) represented that goods or services were of a particular standard, quality or grade when they were of another.

76. In presenting identical information to consumers who visit their websites and read said information, Defendant PWU(HI) advertised goods or services with intent not to sell them as advertised.

77. In presenting identical information to consumers who visit their websites and read said information, Defendant PWU(HI) engaged in conduct which created a likelihood of confusion or of misunderstanding.

78. In maintaining a website at www.pwu.com that made no distinction between Defendant PWU(HI) and Pacific Western University, Defendant PWU(HI) violated Haw. Rev. Stat. §§ 480-2 and/or 481A-3(a)(2), (3), (5), (7), (9) and (12).

79. Each unfair or deceptive act or practice constitutes a separate and distinct violation of Haw. Rev. Stat. §§ 480-2 and/or 481A-3.

COUNT VII
SHARED ADDRESS AT WWW.PWU.COM

80. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 79 above as if fully set forth herein.

81. Defendant PWU(HI) and Pacific Western University both maintained and continue to maintain websites accessed through a common address at www.pwu.com.

82. The manner in which Defendant PWU(HI) and Pacific Western University maintain their websites accessed through common address is unfair and/or deceptive.

83. In maintaining its website accessed through a common address at www.pwu.com with Pacific Western University, Defendant PWU(HI) engaged in unfair or deceptive acts or practices.

84. In maintaining its website accessed through a common address at www.pwu.com with Pacific Western University, Defendant PWU(HI) caused the likelihood of confusion or of misunderstanding as to affiliation, connection, association with or certification by another.

85. In maintaining its website accessed through a common address at www.pwu.com with Pacific Western University, Defendant PWU(HI) represented that goods or services had sponsorship, approval, characteristics, uses or benefits that they did not have or that a person had a sponsorship, approval, status, affiliation or connection that the person did not have.

86. In maintaining its website accessed through a common address at www.pwu.com with Pacific Western University, Defendant PWU(HI) represented that goods or services were of a particular standard, quality or grade when they were of another.

87. In maintaining its website accessed through a common address at www.pwu.com with Pacific Western University, Defendant PWU(HI) engaged in conduct which created a likelihood of confusion or of misunderstanding.

88. In maintaining its website accessed through a common address at www.pwu.com with Pacific Western University, Defendant PWU(HI) violated Haw. Rev. Stat. §§ 480-2 and/or 481A-3(a)(3), (5), (7) and (12).

89. Each unfair or deceptive act or practice constitutes a separate and distinct violation of Haw. Rev. Stat. §§ 480-2 and/or 481A-3.

COUNT VIII
MISREPRESENTATIONS AND OMISSIONS IN
CATALOGS, PROMOTIONAL MATERIALS OR CONTRACTS

90. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 89 above as if fully set forth herein.

91. Defendant PWU(HI) produces catalogs, promotional materials or contracts in various media including but not limited to the internet where Defendant PWU(HI) maintains a website accessed through www.pwu.com.

92. The catalogs, promotional materials or contracts contain misrepresentations or omissions including but not limited to stating that its "campus" is located at 1400 Kapiolani Boulevard.

93. In making misrepresentations or omissions in its catalogs, promotional materials or contracts, Defendant PWU(HI) engaged in unfair or deceptive acts or practices.

94. In making misrepresentations or omissions in its catalogs, promotional materials or contracts, Defendant PWU(HI) represented that goods or services had characteristics, uses or benefits that they did not have.

95. In making misrepresentations or omissions in its catalogs, promotional materials or contracts, Defendant PWU(HI) represented that goods or services were of a particular standard, quality or grade when they were of another.

96. In making misrepresentations or omissions in its catalogs, promotional materials or contracts, Defendant PWU(HI) advertised goods or services with intent not to sell them as advertised.

97. In making misrepresentations or omissions in its catalogs, promotional materials or contracts, Defendant PWU(HI) engaged in conduct which created a likelihood of confusion or of misunderstanding.

98. In maintaining a website at www.pwu.com that made no distinction between Defendant PWU(HI) and Pacific Western University, Defendant PWU(HI) violated Haw. Rev. Stat. §§ 480-2 and/or 481A-3(a)(5), (7), (9) and (12).

99. Each unfair or deceptive act or practice constitutes a separate and distinct violation of Haw. Rev. Stat. §§ 480-2 and/or 481A-3.

RELIEF

WHEREFORE, Plaintiff prays that:

1. This Court find, order, adjudge and declare that the conduct of Defendant PWU(HI), as alleged herein, violated the statutory provisions as set forth herein.

2. Upon a preliminary and/or final hearing hereof and pursuant to Haw. Rev. Stat. §§ 480-15 and 487-15, this Court issue an order enjoining Defendant PWU(HI), its agents, employees, successors and assigns from engaging in the unfair or deceptive acts or practices in violation of Haw. Rev. Stat. §§ 446E-2, 446E-3, 446E-5, 480-2 and 481A-3 as alleged herein.

3. Pursuant to Haw. Rev. Stat. § 480-12, this Court find, order, adjudge and declare that any and all written or oral contracts or agreements entered into between Defendant PWU(HI) and students are in violation of Haw. Rev. Stat. § 480-2 and are void and unenforceable unless ratified by students in writing.

4. Pursuant to Haw. Rev. Stat. § 487-14, this Court order Defendant PWU(HI) to pay restitution to each and every student of Defendant PWU(HI) based on the violations alleged herein.

5. Pursuant to Haw. Rev. Stat. §§ 480-3.1, this Court order Defendant PWU(HI) to pay a civil penalty of \$500 to \$10,000 for each and every violation of Haw. Rev. Stat. § 480-2 alleged herein.

6. Plaintiff recover its attorneys' fees and all reasonable costs and sums expended herein, as allowed by law.

7. Plaintiff have such other and further relief that may be just and proper.

DATED: Honolulu, Hawaii, 3/20/05.


MICHAEL J. S. MORIYAMA
Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by it Office of)	Civil No. _____
Consumer Protection,)	(Other Civil Action)
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Plaintiff,)	SUMMONS
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vs.)	
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PACIFIC WESTERN UNIVERSITY)	
(HAWAII), INC. (aka AMERICAN)	
PACWEST INTERNATIONAL)	
UNIVERSITY), a Hawaii corporation,)	
)	
Defendants.)	
)	
)	

SUMMONS

TO THE DEFENDANTS:

You are hereby summoned and required to serve upon plaintiff's attorney, whose address is stated above, an answer to the complaint which is attached. This action must be taken within twenty (20) days after service of this summons upon you, exclusive of the day of service.

If you failed to make your answer within the twenty (20)-day time limit, judgment by default will be rendered against you for the relief demanded in the complaint.

Pursuant to Rule 4(b) of the Hawaii Rules of Civil Procedure, this summons shall not be delivered between 10:00 p.m. and 6:00 a.m. on premises not

open to the public, unless a judge of the district or circuit courts permits, in writing on the summons, personal delivery during those hours.

If you fail to obey this summons this may result in an entry of default and default judgment.

In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the First Circuit Court Administration Office at PHONE NO. (808) 539-4399, FAX (808) 539-4322, or TTY (808) 539-4853, at least ten (10) working days prior to your hearing or appointment date.

DATED: Honolulu, Hawaii, MAR 28 2005

H. CHING

Circuit Court Clerk

